

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re  
PACIFIC THOMAS CORPORATION,  
dba PACIFIC THOMAS CAPITAL, dba  
SAFE STORAGE,  
Debtor.

KYLE EVERETT, Chapter 11 Trustee  
Plaintiff,  
v.  
THOMAS CAPITAL INVESTMENTS,  
Hawaiian domestic limited partnership  
Defendant.

Case No. 15-cv-06321-MMC

Bankruptcy Case No. 14-54232 MEH,  
Adv. Proc. No. 14-05177

## **DECISION AFFIRMING JUDGMENT OF BANKRUPTCY COURT**

Before the Court is defendant/appellant Thomas Capital Investments' ("TCI") appeal from the judgment entered December 8, 2015, in the United States Bankruptcy Court, in favor of Kyle Everett, the Chapter 11 trustee ("Trustee") for the estate of Pacific Thomas Corporation ("Debtor"). Having read and considered appellant's brief<sup>1</sup> and the record on appeal, the Court rules as follows.

On August 5, 2014, the Trustee commenced an adversary proceeding against TCI, in which the Trustee sought to avoid and recover from TCI transfers in the amount of \$341,059.51, which transfers allegedly were made to TCI by or on behalf of the Debtor in violation of Title 11 of the United States Code. (See Compl., filed August 5, 2014, Ex.

<sup>1</sup>The Trustee, appellee herein, did not file a brief.

1       1.)<sup>2</sup> Of the amount sought, \$107,794.88 had not been transferred to TCI by the Debtor,  
2 but, rather, by another entity, Pacific Trading Ventures ("PTV"). (See Supp. Brief, filed  
3 October 19, 2015, at 3:10-25.) With respect to the transfers by PTV, the parties  
4 appeared to agree that the funds transferred were rental payments collected by PTV from  
5 customers of a self-storage facility owned by the Debtor. The parties disagreed,  
6 however, as to whether the rental payments were the property of the Debtor or PTV, said  
7 dispute being centered on the nature of the contractual relationship between the Debtor  
8 and PTV. The Trustee took the position that the relationship was governed by a 2003  
9 management services agreement under which PTV collected rent on behalf of the  
10 Debtor, i.e., that the rental payments were the property of the Debtor, whereas TCI took  
11 the position that the relationship was governed by a 2005 lease agreement whereby PTV  
12 leased the self-storage facility from the Debtor, i.e., that the rental payments were the  
13 property of PTV.

14           After conducting a court trial, the bankruptcy court found the Trustee was entitled  
15 to the total amount sought, specifically, \$341,059.51.

16           In the instant appeal, TCI argues the bankruptcy court erred in finding the sums  
17 transferred to TCI by PTV were the property of the Debtor.<sup>3</sup> In that regard, TCI first  
18 observes that, in a prior adversary proceeding brought by the Trustee against PTV and  
19 others, but not TCI, the bankruptcy court had found the lease agreement between the  
20 Debtor and PTV was invalid and that the contractual relationship between said entities  
21 was governed by the management services agreement.<sup>4</sup> Based thereon, TCI contends

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22           <sup>2</sup>Although the Trustee initially sought to avoid and recover the sum of \$341,809.51  
23 (see id.), the Trustee later withdrew its claim as to one transfer in the amount of \$750  
24 (see Trial Hearing Transcript at 47:10 - 48:3, 53:15-17, Everett v. Thomas Capital  
Investments, Adv. No. 14-5117, Doc. No. 57 (N.D. Cal. Bankr.)).

25           <sup>3</sup>In its brief, TCI does not contend the bankruptcy court erred to the extent the  
26 bankruptcy court found the Trustee was entitled to sums transferred to TCI by the Debtor.

27           <sup>4</sup>The judgment entered in the prior proceeding was affirmed by this Court. See  
28 Everett v. Whitney (In Re Pacific Thomas Corp.), 2016 WL 2643679, at \*5 (N.D. Cal. May  
10, 2016) (affirming judgment; finding bankruptcy court "did not err in finding the 2005  
[l]ease was invalid and unenforceable").

1 the bankruptcy court, in the instant adversary proceeding, erroneously determined that  
2 TCI was "bound" by the judgment entered against PTV in the prior adversary proceeding  
3 (see Opening Brief at 6:19-21), despite the fact that TCI was not a party to that action.

4 As set forth below, the Court finds the bankruptcy court did not base its  
5 determination on a finding that TCI was bound by the bankruptcy court's decision in the  
6 prior adversary proceeding.

7 First, the bankruptcy court found the Trustee had met its burden to show that the  
8 transfers to TCI by PTV were the property of the Debtor. As the bankruptcy court  
9 explained, the Trustee had served on TCI requests for admission in which TCI was asked  
10 to admit (1) the Debtor and PTV were parties to a management services agreement in  
11 which PTV agreed to "provide property management services to [the] Debtor at [the]  
12 Debtor's self-storage facilities" and (2) each transfer made to TCI by PTV that the Trustee  
13 sought to avoid and recover was "a transfer of an interest of the Debtor in property" (see  
14 Memorandum Decision, filed December 8, 2015, at 2:5-6, 2:26, 3:2-12), after which TCI  
15 failed to respond to either such request (see id. at 2:6-7). As the bankruptcy court further  
16 explained, where a party fails to respond to a request for admission, the request is  
17 deemed "admitted," see Fed. R. Civ. P 36(a)(3), and such admitted matter is  
18 "conclusively established unless the court, on motion, permits the admission to be  
19 withdrawn or amended," see Fed. R. Civ. P. 36(b). Noting TCI "did not file a motion to  
20 withdraw its admissions" (see Memorandum Decision at 2:10), the bankruptcy court  
21 found the Trustee "had established by [TCI's] admissions that each Transfer was a  
22 transfer of an interest of the Debtor in property" (see id. at 2:11-12; 11:16-17).<sup>5</sup>

23 Next, the bankruptcy court, although finding the Trustee, given TCI's admissions,  
24 had established the subject transfers were the property of the Debtor, nonetheless

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27 <sup>5</sup>TCI has not challenged the bankruptcy court's rulings with respect to the effect of  
28 TCI's failure to respond to the Trustee's requests for admission.

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afforded TCI the "opportunity to introduce evidence in support of its defenses," including its defense that the transfers TCI received from PTV were the property of PTV (see id. at 2:26, 3:8-12, 6:16-17; 11:16-17).<sup>6</sup> In that regard, to support its position that the contractual relationship between the Debtor and PTV was governed by the lease agreement and not the management services agreement, TCI offered testimony by one of its officers, documentary evidence and the "transcript from the trial in the prior adversary proceeding." (See id. at 11:17-20.) The bankruptcy court, while noting its prior ruling on the issue as presented in the earlier adversary proceeding, expressly acknowledged TCI's argument that TCI was not bound by such prior determination (see id. at 11:8-15), after which the bankruptcy court identified the evidence TCI had offered "[i]n this case" (see id. at 11:16), and made the following findings:

On the basis of the evidence presented, the court does not find [TCI's] argument persuasive in this adversary proceeding — particularly when taking into consideration the testimony introduced through the prior trial transcript. The evidence presented is insufficient to overcome [TCI's] admission that each transfer was a transfer of an interest in Debtor's property.

(See id. at 11:16-24.)

The Memorandum Decision thus makes clear that the bankruptcy court's determination was based on the evidence presented at the trial conducted on the claims in the Trustee's complaint against TCI, i.e., "in this adversary proceeding" (see id.), and not based on a finding that TCI was bound by the bankruptcy court's decision in the prior adversary proceeding. Indeed, if the bankruptcy court was of the view that its prior determination was binding on TCI, there would have been no need to allow TCI to offer evidence and then determine whether or not such evidence was persuasive.

In sum, as the bankruptcy court did not base its decision on a finding that TCI was bound by the determination in the prior proceeding, and TCI makes no other argument on appeal, TCI has failed to show it is entitled to any relief on appeal.

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<sup>6</sup>The bankruptcy court made the ruling over objection by the Trustee. As the Trustee has not filed a brief in response to TCI's appellate brief, the merits of such objection are not before this Court.

## CONCLUSION

For the reasons stated above, the judgment of the bankruptcy court is hereby  
AFFIRMED.

## **IT IS SO ORDERED.**

Dated: December 8, 2016

Maxine M. Chesney  
MAXINE M. CHESNEY  
United States District Judge

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Northern District of California